

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

MAILING ADDRESS:

710 E STREET • SUITE 200

P. O. BOX 4908

EUREKA, CA 95501-1865

EUREKA, CA 95502-4908

VOICE (707) 445-7833

FACSIMILE (707) 445-7877



Th15b

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Staff:	Ruby Pap
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Hearing Date:	July 14, 2005

STAFF REPORT: APPEAL**SUBSTANTIAL ISSUE**

APPEAL NO.:	A-1-MEN-05-029
APPLICANTS:	Charles and Dale Phelps
LOCAL GOVERNMENT:	County of Mendocino
DECISION:	Approval with Conditions
PROJECT LOCATION:	Approximately 5 miles southeast of Point Arena, on the southwest side of Highway One, approximately ¼ mile southeast of its intersection with Iversen Road, at 30250 South Highway One (APN 142-031-11) (Mendocino County)
PROJECT DESCRIPTION:	(a) The removal of an existing 1,805 – square-foot residence and using portions of it to construct a new 621 – square-foot workshop and a new 707 – square-foot guest cottage and art studio; (b) construction of a new 2,259 – square-foot residence with a 672 – square-foot detached garage and a 625 – square-foot porte cochere in between; and (c) additional improvements including an LPG tank, generator, solar panels, new and relocated underground utility lines, stormwater infiltration pits, a curtain drain, septic tank, leach field, additions to the driveway, a terrace, paths, a utility screen fence, and a dog pen.

APPELLANT: 1) Eric Beihl

SUBSTANTIVE FILE 1) Mendocino County CDP No. 62-04; and
DOCUMENTS: 2) Mendocino County Local Coastal Program

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that a SUBSTANTIAL ISSUE exists with respect to the grounds on which the appeal has been filed and that the Commission hold a de novo hearing, because the appellant has raised a substantial issue with the local government's action and its consistency with the certified Local Coastal Program (LCP).

The development, as approved by the County, consists of (a) the removal of an existing 1,805 – square-foot residence and using portions of it to construct a new 621 – square-foot workshop and a new 707 – square-foot guest cottage and art studio; (b) construction of a new 2,259 square foot residence with a 672 square foot detached garage and a 625 square foot porte cochere in between; and (c) additional improvements including an LPG tank, generator, solar panels, new and relocated underground utility lines, stormwater infiltration pits, a curtain drain, septic tank, leach field, additions to the driveway, a terrace, paths, a utility screen fence, and a dog pen.

The project site is located approximately 5 miles southeast of Point Arena, on the southwest side of Highway One, approximately ¼ mile southeast of its intersection with Iversen Road, at 30250 South Highway One.

The Appellant poses three separate contentions, including: (1) the geologic setbacks of the approved development from the bluff are not sufficient to protect the development from the hazards associated with coastal bluff erosion, and the approved residence would cause geologic instability on the bluff from the extensive water drainage from the buildings, inconsistent with the geologic hazards policies of the LCP; (2) the approved development did not provide physical public access to the shoreline as a condition of permit approval, inconsistent with public access policies of the LCP and the Coastal Act; and (3) the approved development would be highly visible from Iversen Point Road and it is incompatible with the “established visual scale” of the area, inconsistent with the visual resource policies of the LCP.

Staff recommends that the Commission find that all three contentions are valid grounds for an appeal, and that the contention regarding geologic hazards raises a substantial issue of conformity of the approved development with the certified LCP. LCP policies require that the geologic stability of the site be maintained over the development's expected economic life, which is defined as 75 years, and that mitigation measures must be

implemented to minimize threats to the development from geologic hazards arising from landslides, erosion, and other geologic events. The geotechnical investigation for the approved project does not provide sufficient information to ensure that the site of the approved development will be stable at the end of its 75-year life because a quantitative slope stability analysis was not conducted. Accordingly, the location of the line representing a minimum factor of safety of 1.5 cannot be established, for current conditions, or for the presumed configuration of the bluff after 75 years of coastal erosion. Furthermore, there is good reason to consider that the site will have stability problems because (a) it is located near the tip of a point, which tends to focus wave energy; (b) there is a dormant landslide to the west which can be expected to reactivate as marine erosion erodes its toe; and (c) there are active landslides on the south side demonstrating that the bluff is unstable.

Staff recommends that the Commission find that the second contention regarding the project's conformance with public access policies of the LCP and Coastal Act does not raise a substantial issue, and the local government has a high degree of factual and legal support for its decision because the approved development would not impact any existing public trails or designated access points, both on the property and elsewhere.

Lastly, staff recommends that the Commission find that the third contention regarding the project's conformance with visual resource policies of the LCP does not raise a substantial issue because evergreen trees surrounding the property and largely screen the approved development, the size and configuration of the approved buildings are not imposing, and the new development does not conflict with the surrounding development.

Because the approved development cannot be found to be consistent with the geologic hazards policies of the LCP, staff recommends that the Commission find that the appeal raises a substantial issue of conformance of the project as approved by the County with the certified LCP and the public access policies of the Coastal Act.

The motion to adopt the staff recommendation of Substantial Issue is found on page no. 5.

STAFF NOTES:

1. Appeal Process

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603).

Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of

developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, or within three hundred feet of the inland extent of any beach, or of the mean high tide line of the sea where there is no beach, or within one hundred feet of any wetland or stream, or within three hundred feet of the top of the seaward face of any coastal bluff, or those located in a sensitive coastal resource area.

Furthermore, developments approved by counties may be appealed if they are not designated the “principal permitted use” under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. The grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program and, if the development is located between the first public road and the sea, the public access policies set forth in the Coastal Act.

The subject development is appealable to the Commission because the proposed residence is (1) within a sensitive coastal resource area. Section 20.308.110(6) of the Mendocino County Zoning Code and Section 30116 of the Coastal Act define sensitive coastal resource areas as “those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity,” including, among other categories, “highly scenic areas.” The approved development is located within an area designated in the LCP on the certified land use map as a “highly scenic area,” and, as such, is appealable to the Commission. The subject development is also appealable to the Commission because the proposed residence is located between the sea and the first public road paralleling the sea, and within three hundred feet of the top of the seaward face of a coastal bluff.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that the appeal raises no substantial issue of conformity of the approved project with the certified LCP. Since the staff is recommending substantial issue, unless three Commissioners object, it is presumed that the appeal raises a substantial issue and the Commission may proceed to its *de novo* review.

If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised.

The only persons qualified to testify before the Commission on the substantial issue question are the applicants, the appellant and persons who made their views known to the local government (or their representatives). Testimony from other persons regarding substantial issue must be submitted in writing.

Unless it is determined that there is no substantial issue, the Commission will proceed to the *de novo* portion of the appeal hearing and review the merits of the proposed project. This *de novo* review may occur at the same or subsequent meeting. If the Commission were to conduct a *de novo* hearing on the appeal, because the proposed development is located between the first public road and the sea, the applicable test for the Commission to consider would be whether the development is in conformity with the certified Local Coastal Program and with the public access and public recreation policies of the Coastal Act.

2. Filing of Appeal

One appeal was filed by Eric Beihl (Exhibit No. 3). The appeal was filed with the Commission in a timely manner on June 14, 2005 within 10 working days of receipt by the Commission of the County's Notice of Final Action (Exhibit No. 4) on June 13, 2005.

I. **MOTION, STAFF RECOMMENDATION AND RESOLUTION**

Pursuant to Section 30603(b) of the Coastal Act and as discussed below, the staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which the appeal has been filed. The proper motion is:

MOTION:

I move that the Commission determine that Appeal No. A-1-MEN-05-029 raises No Substantial Issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

STAFF RECOMMENDATION:

Staff recommends a **NO** vote. Failure of this motion will result in a *de novo* hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-1-MEN-05-029 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

II. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. APPELLANTS' CONTENTIONS

The Commission received one appeal of the County of Mendocino's decision to conditionally approve the development from Eric Beihl. The project as approved by the County involves (a) the removal of an existing 1,805 – square-foot residence and using portions of it to construct a new 621 – square-foot workshop and a new 707 – square-foot guest cottage and art studio; (b) construction of a new 2,259 square foot residence with a 672 square foot detached garage and a 625 square foot porte cochere in between; and (c) additional improvements including an LPG tank, generator, solar panels, new and relocated underground utility lines, stormwater infiltration pits, a curtain drain, septic tank, leach field, additions to the driveway, a terrace, paths, a utility screen fence, and a dog pen.

The approved project is located approximately 5 miles southeast of Point Arena, on the southwest side of Highway One, approximately ¼ mile southeast of its intersection with Iversen Road, at 30250 South Highway One.

The appeal raises three contentions alleging inconsistency of the approved project with the County's certified LCP. The appellants' contentions are summarized below, and the full text of the contentions is included as exhibit no. 5.

1. Geologic Hazards

The Appellant contends the geologic setbacks of the approved development from the bluff are not sufficient to protect the development from the hazards associated with coastal bluff erosion, stating that the cliff has eroded approximately one foot per year since the early 1960s. Further, it is alleged that the approved residence would cause geologic instability on the bluff, or "alteration of landforms," caused from the extensive water drainage from the approved buildings.

2. Public Access

The Appellant contends that no physical public access to the shoreline was required as a condition of approval, inconsistent with public access policies of the LCP, alleging that despite the passage of the Coastal Initiative in 1972, physical access to the shoreline is no longer being required on projects.

3. Public Views and Compatibility with the Surrounding Area

The Appellant further contends that the approved development would be highly visible from Iversen Point Road and that the development is incompatible with the “established visual scale” of the area, alleging that the development and its associated infrastructure would take up nearly 75% of the parcel’s land, and that the interior floor area is twice that of other residences in the neighborhood, inconsistent with visual resource policies of the LCP.

B. LOCAL GOVERNMENT ACTION

On May 26, 2005, the Mendocino County Coastal Permit Administrator conditionally approved the Coastal Development Permit for the project (CDP 62-04) (exhibit no. 4). The permit approved (a) the removal of an existing 1,805 – square-foot residence and using portions of it to construct a new 621 – square-foot workshop and a new 707 – square-foot guest cottage and art studio; (b) construction of a new 2,259 square foot residence with a 672 square foot detached garage and a 625 square foot porte cochere in between; and (c) additional improvements including an LPG tank, generator, solar panels, new and relocated underground utility lines, stormwater infiltration pits, a curtain drain, septic tank, leach field, additions to the driveway, a terrace, paths, a utility screen fence, and a dog pen.

The approved permit imposed several special conditions pertaining to the appeal’s contentions, including requiring that the project comply with all the recommendations of the geotechnical investigation prepared by BACE Geotechnical in June of 2004; that prior to issuance of the CDP, the owners execute and record a deed restriction on the property providing that they understand that the site may be subject to extraordinary geologic hazards, that the owners agree to hold harmless the County against any liability arising out of the design, construction, operation, maintenance, existence or failure of the permitted project, that adverse impacts to the property are the responsibility of the applicant, that the landowners shall not construct bluff or shoreline protective devices to protect the development from geologic hazards, that the landowner shall remove the development when bluff retreat or soil failure reaches a point at which the structure is threatened, and that all development shall run with the land; and that any change in colors or materials shall be subject to review and approval of the Coastal Permit Administrator for the life of the project; and that exterior lighting fixtures be designed to be non-glaring to neighboring parcels.

The decision of the Coastal Permit Administrator was not appealed at the local level to the County Board of Supervisors. The County then issued a Notice of Final Action, which was received by the Commission staff on June 13, 2005 (exhibit no. 5). Section 13573 of the Commission’s regulations allows for appeals of local approvals to be made directly to the Commission without first having exhausted all local appeals when, as here, the local jurisdiction charges an appeal fee for the filing and processing of local appeals.

The County's approval of the project was appealed to the Coastal Commission in a timely manner on June 14, 2005, within 10-working days after receipt by the Commission of the Notice of Final Local Action.

C. PROJECT AND SITE DESCRIPTION

The approved development is located in the coastal zone on a bluff top lot approximately 5 miles southeast of Point Arena on the southwest side of Highway One, approximately ¼ mile southeast of its intersection with Iversen Road. The site is presently developed with a 1,805 – square-foot single-family residence with an attached carport, driveway, well, pump house, water tank, septic tank, and leach field. As noted above, the approved development includes the construction of a new residence in the general location of the existing residence but approximately five feet landward, and the removal of the existing residence and using portions of it to build accessory buildings landward of the new residence. The newly approved 2,259 – square-foot single story residence consists of one bedroom, and 1 ½ baths. It would be connected to the new 672 – square-foot garage by a 625 – square-foot porte cochere. The master bedroom and den of the existing residence would be used to construct the new guest cottage and art studio (707 square feet and 13'10" high). The living/dining room of the existing house would be used to form the new workshop (15'7" high and 621 square feet). The new residence is designed with three wings, connected by a 14' diameter cupola with a conical roof at the junction of the wings. The roof ridges over the majority of the approved structures have a height above average natural grade of about 16'6", however the ridge over the porte cochere is approximately one foot higher, and the cupola on the new residence extends to a height of 21'5". All structures would have crimped seam copper siding, copper shingle roofing, forest green wood trim, and dark colored window frames and doors. Approved exterior lighting includes ceiling or wall-mounted shielded downcast lighting fixtures.

The subject 2.55 +- acre bluff top lot is long and narrow in shape, and extends from the ocean at its south end to Highway One at its northeast end (exhibit 2). Due to the shape of the bluff, the parcel has ocean frontage on its western, southern, and southeastern sides. The western facing view overlooks a crescent shaped beach and Iversen Point, including the Iversen Point Subdivision to the west. The subject property and its surrounding neighbors are located in an LCP designated "highly scenic area", and zoned rural residential 2-acre minimum. The property has residential neighbors on its northwest and east sides, each with medium sized homes. The property is characterized by a long open maintained meadow-like lawn in the center of the parcel, surrounded by evergreen trees on all sides, and punctuated by a cluster of evergreen trees adjacent to the existing house on the southwest end of the parcel, and a row of mature and newly planted evergreen trees bordering the highway on the northeast end of the parcel. A drainage ditch runs along the eastern border of the parcel, collecting runoff from the highway and depositing it over the southeastern bluff.

D. SUBSTANTIAL ISSUE ANALYSIS.

Section 30603(b)(1) of the Coastal Act states:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

The term “substantial issue” is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it “finds that the appeal raises no significant question.” (California Code of Regulations, Title 14, Section 13115(b).) In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

All three contentions raised in this appeal present potentially valid grounds for appeal in that they allege the project's inconsistency with policies of the certified LCP and the public access policies of the Coastal Act. These contentions allege that the approval of the project by the County raises significant issues related to LCP provisions regarding:

(a) geologic hazards (b) public access, and (c) visual resources. In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that with respect to the allegation concerning the consistency of the project as approved with the provisions of the LCP regarding geologic hazards, the appeal raises a substantial issue with regard to the approved project's conformance with the certified Mendocino County LCP.

Allegations Raising Substantial Issue:

a. Geologic Hazards

The Appellant contends that the geologic setbacks of the approved development from the bluff are not sufficient to protect the development from the hazards associated with coastal bluff erosion, stating that the cliff has eroded approximately one foot per year since the early 1960s. Further, it is alleged that the approved residence would cause geologic instability on the bluff, or "alteration of landforms," from the extensive water drainage from the buildings.

LCP Policies and Standards

LUP Policy 3.4-1 states:

The County shall review all applications for Coastal Development permits to determine threats from and impacts on geologic hazards arising from seismic events, tsunami runup, landslides, beach erosion, expansive soils and subsidence and shall require appropriate mitigation measures to minimize such threats. In areas of known or potential geologic hazards, such as shoreline and bluff top lots and areas delineated on the hazards maps the County shall require a geologic investigation and report, prior to development, to be prepared by a licensed engineering geologist or registered civil engineer with expertise in soils analysis to determine if mitigation measures could stabilize the site. Where mitigation measures are determined to be necessary, by the geologist, or registered civil engineer the County shall require that the foundation construction and earthwork be supervised and certified by a licensed engineering geologist, or a registered civil engineer with soil analysis expertise to ensure that the mitigation measures are properly incorporated into the development.

LUP Policy 3.4-2 states:

The County shall specify the content of the geologic site investigation report required above. The specific requirements will be based upon the land use and building type as well as by the type and intensity of potential hazards. These site investigation requirements are detailed in Appendix 3.

LUP Policy 3.4-3 states:

The County shall review development proposals for compliance with the Alquist-Priolo Special Studies Zone Act (as amended May 4, 1975).

LUP Policy 3.4-4 states:

The County shall require that water, sewer, electrical, and other transmission and distribution lines which cross fault lines be subject to additional safety standards beyond those required for normal installations, including emergency shutoff where applicable.

LUP Policy 3.4-5 states:

The County shall require that residential, commercial and industrial structures be sited a minimum of 50 feet from a potentially, currently, or historically active fault. Greater setbacks may be required if warranted by local geologic conditions.

LUP Policy 3.4-7 states:

The County shall require that new structures be set back a sufficient distance from the edges of bluffs to ensure their safety from bluff erosion and cliff retreat during their economic life spans (75 years). Setbacks shall be of sufficient distance to eliminate the need for shoreline protective works. Adequate setback distances will be determined from information derived from the required geologic investigation and from the following setback formula:

Setback (meters) = Structure life (years) x Retreat rate (meters/year)

The retreat rate shall be determined from historical observation (e.g., aerial photographs) and/or from a complete geotechnical investigation.

All grading specifications and techniques will follow the recommendations cited in the Uniform Building Code or the engineering geologists report.

LUP Policy 3.4-8 states:

Property owners should maintain drought-tolerant vegetation within the required blufftop setback. The County shall permit grading necessary to establish proper drainage or to install landscaping and minor improvements in the blufftop setback.

LUP Policy 3.4-9 states:

Any development landward of the blufftop setback shall be constructed so as to ensure that surface and subsurface drainage does not contribute to the erosion of the bluff face or to the instability of the bluff itself.

Section 20.500.015 of the Coastal Zoning Code states:

(A) Determination of Hazard Areas.

(1) Preliminary Investigation. *The Coastal Permit Administrator shall review all applications for Coastal Development Permits to determine threats from and impacts on geologic hazards.*

(2) Geologic Investigation and Report. *In areas of known or potential geologic hazards such as shoreline and blufftop lots and areas delineated on the hazard maps, a geologic investigation and report, prior to development approval, shall be required. The report shall be prepared by a licensed engineering geologist or registered civil engineer pursuant to the site investigation requirements in [Chapter 20.532](#).*

(B) Mitigation Required. *Where mitigation measures are determined to be necessary, the foundation, construction and earthwork shall be supervised and certified by a licensed engineering geologist or a registered civil engineer with soil analysis expertise who shall certify that the required mitigation measures are incorporated into the development. (Ord. No. 3785 (part), adopted 1991)*

Sec. 20.500.020, “Geologic Hazards - Siting and Land Use Restrictions,” states in applicable part:

(A) Faults.

(1) Residential, commercial and industrial structures shall be sited a minimum of fifty (50) feet from a potentially, currently or historically active fault. Greater setbacks shall be required if warranted by geologic conditions.

(2) Water, sewer, electrical and other transmission and distribution lines which cross fault lines shall be subject to additional standards for safety including emergency shutoff valves, liners, trenches and the like. Specific safety measures shall be prescribed by a licensed engineering geologist or a registered civil engineer.

(B) Bluffs.

(1) New structures shall be setback a sufficient distance from the edges of bluffs to ensure their safety from bluff erosion and cliff retreat during their economic life spans (seventy-five (75) years). New development shall be setback from the edge of bluffs a distance determined from information derived from the required geologic investigation and the setback formula as follows:

*Setback (meters) = structure life (75 years) x retreat rate
(meters/year)*

*Note: The retreat rate shall be determined from historical observation
(aerial photos) and/or from a complete geotechnical investigation.*

*(2) Drought tolerant vegetation shall be required within the blufftop
setback.*

*(3) Construction landward of the setback shall not contribute to erosion of
the bluff face or to instability of the bluff.*

(D) Landslides.

*(1) New development shall avoid, where feasible, existing and prehistoric
landslides. Development in areas where landslides cannot be avoided
shall also provide for stabilization measures such as retaining walls,
drainage improvements and the like. These measures shall only be
allowed following a full environmental, geologic and engineering review
pursuant to [Chapter 20.532](#) and upon a finding that no feasible, less
environmentally damaging alternative is available.*

Section. 20.532.070, “Geologic Hazards -- Evaluation and Supplemental Application
Information” states:

*(A) The extent of additional geotechnical study that must accompany Coastal
Development applications depends on the site and type of project as follows:*

(1) Land Use and Building Type.

*(a) Type 1: Public, High Occupancy and Critical Use, including:
Hospitals, Fire and Police Station, Communication Facilities,
Schools, Auditoriums, Theaters, Penal Institutions, High-rise
Hotels, Office and Apartment, Buildings (over 3 stories), and
Major Utility Facilities.*

*(b) Type 2: Low Occupancy, including: Low-rise Commercial and
Office Buildings (one (1) to three (3) stories), Restaurants (except
in high-rise category), and Residential (less than eight (8) attached
units and less than 3 stories).*

*(c) Type 3: Residential (less than eight (8) attached units), and
Manufacturing and Storage/Warehouse except where highly toxic
substances are involved which should be evaluated on an
individual basis with mandatory geotechnical review.).*

(d) Type 4: Open Space, Agricultural, Golf Courses, etc.

(2) Required Studies.

(a) Fault Rupture. *Prior to proceedings with any Type 1 development, published geologic information shall be reviewed by an engineering geologist or civil engineer, the site shall be mapped geologically and aerial photographs of the site and vicinity shall be examined for lineaments. Where these methods indicate the possibility of faulting, a thorough investigation is required to determine if the area contains a potential for fault rupture. All applications for development proposals shall be reviewed for compliance with the Alquist-Priolo Special Studies Zone Act pursuant to Subsection (D) below and shall be deemed incomplete until such time as the reviewing geologist report is accepted by the County.*

(b) Seismic-Related Ground Failure. *Site investigation requirements for seismic-related ground failure are described as follows:*

(i) Land Use/Building Type 2 and 3 within Zone 1 (Low): Current building code requirements must be met, as well as other existing state and local ordinances and regulations. A preliminary geotechnical investigation should be made to determine whether or not the hazards zone indicated by the Land Capabilities/Natural Hazards maps is reflected by site conditions.

(ii) Land Use/Building Type 1 within Zone 1 (Low) and Land Use/Building Type 3 within Zones 2 (Moderate) and Zone 3 (High): In addition to Subsection (i), above, geotechnical investigation and structural analysis sufficient to determine structural stability of the site for the proposed use is necessary. It may be necessary to extend the investigation beyond site boundaries in order to evaluate the shaking hazard. All critical use structure sites require detailed subsurface investigation.

(iii) Land Use/Building Type 1 within Zone 2 (Moderate) and Land Use/Building Type 2 within Zones 2 (Moderate) and Zone 3 (High): In addition to Subsections (i) and (ii), above, surface and/or subsurface investigation and analyses sufficient to evaluate the site's potential for liquefaction and related ground failure shall be required.

(iv) Land Use/Building Type 1 within Zone 3 (High): In addition to Subsections (i), (ii) and (iii), detailed dynamic ground response analyses must be undertaken.

(3) Unspecified land uses shall be evaluated and assigned categories of investigation on an individual basis.

*(a) **Tsunami.** Land Use Types 1, 2 and 3 shall not be permitted in tsunami-prone areas. Development of harbors and Type 4 uses should be permitted, provided a tsunami warning plan is established.*

*(b) **Landsliding.** All development plans shall undergo a preliminary evaluation of landsliding potential. If landslide conditions are found to exist and cannot be avoided, positive stabilization measures shall be taken to mitigate the hazard.*

(B) Review of Geologic Fault Evaluation Report by County Geologist. *An application for development which requires a report or waiver prepared pursuant to the Alquist Priolo Act shall not be accepted as complete unless and until there are:*

(1) A fully executed agreement between a geologist registered in the State of California and the County to either review the report required hereinabove or to prepare a request for waiver; and

(2) A fully executed agreement between the County and the applicant to reimburse the County for the costs incurred pursuant to the agreement specified in subparagraph (1) above.

Within thirty (30) days of an application for development located within an Alquist-Priolo special study area, the County shall cause a geologist registered in the State of California (hereinafter called County reviewing geologist) to review the geologic report. The review shall assess the adequacy of the documentation contained in the report, and the appropriateness of the depth of study conducted in consideration of the use proposed for the project site. The County reviewing geologist shall prepare a written review which either concurs or does not concur with the scope, methodology, interpretations, conclusions, and recommendations of the geologic report. Said review shall be subject to comment and revision as may be deemed necessary by the County.

Within thirty (30) days after acceptance of the geologic report, the County shall forward it to the State Geologist to be placed on open file. (Ord. No. 3785 (part), adopted 1991)

Discussion

BACE Geotechnical, Inc. conducted a geotechnical investigation for the approved project in June 2004, and concluded that the site is geotechnically suitable for the development. The report states that the main geotechnical constraints that should be considered in the design and construction of the project include bluff stability, strong seismic shaking from future earthquakes, fault rupture hazard, settlement, and erosion control. BACE

recommended a bluff setback from the southwest bluff of 30 feet, 25 feet from the northwest bluff, and 19 feet from the southeast bluff. The approved house is in conformance with these setbacks.

LUP Policy 3.4-7 and Coastal Zoning Code Section 20.500.020 require that a site for new development remain stable for its expected economic life, which is defined as 75 years. Policy 3.4-1 and Coastal Zoning Code Section 20.500.020 require mitigation measures to minimize threats to the development from geologic hazards arising from landslides, seismic events, beach erosion and other geologic events. A setback adequate to protect development over the economic life of a development must account both for the expected bluff retreat during that time period and the existing slope stability. Long-term bluff retreat is measured by examining historic data including vertical aerial photographs and any surveys conducted that identified the bluff edge. Slope stability is a measure of the resistance of a slope to land sliding, and is assessed by a quantitative slope stability analysis. In such an analysis, the forces resisting a potential landslide are first determined. These are essentially the strength of the rocks or soils making up the bluff. Next, the forces driving a potential landslide are determined. These forces are the weight of the rocks as projected along a potential slide surface. The resisting forces are divided by the driving forces to determine the “factor of safety.” The process involves determining a setback from the bluff edge where a factor of safety of 1.5 is achieved. The Commission generally defines “stable” with respect to slope stability as a minimum factor of safety of 1.5 against landsliding. Because BACE did not conduct a quantitative slope stability analysis, it is unknown where on the bluff top a 1.5 factor of safety is attained, nor what parts of the bluff top will have a 1.5 factor of safety at the end of 75 years of bluff retreat. In this case, there is good reason to consider that the approved development will have stability problems because (a) it is located near the tip of a point, which will focus wave energy; (b) there is a dormant landslide to the west which can be expected to reactivate as marine erosion erodes its toe; and (c) there are active landslides on the south side demonstrating that the bluff is unstable.

Thus, because based on the existing geotechnical investigation one cannot find that (a) the approved project site will be stable over the life of the project, and (b) that threats to the development from geologic hazards have been minimized and mitigated, the degree of legal and factual support for the local government’s decision is low. Therefore, the Commission finds that the project as approved raises a substantial issue of conformance with the provisions of LUP Policies 3.4-1 and 3.4-7 and Coastal Zoning Code Sections 20.500.020

Allegations Raising No Substantial Issue:

As discussed below, the Commission finds that with respect to the appellant’s allegations regarding 1) public access, and 2) visual resources, the project as approved by the County raises no substantial issue with the certified LCP or the access provisions of the Coastal Act.

b. Public Access

The Appellant contends that the County did not require physical public access to the shoreline from the subject property, inconsistent with public access policies of the LCP, alleging that despite the passage of the Coastal Act Proposition 20 in 1972, physical access to the shoreline is no longer being required on projects.

LCP and Coastal Act Policies and Standards

Land Use Plan (LUP) Policy 3.6-5 states in applicable part:

Acquisition methods such as bequests, gifts, and outright purchases are preferred by the County when obtaining public access from private landowners. Other suitable voluntary methods such as a non-profit land trust may be helpful and should be explored in the future. If other methods of obtaining access as specified above have not occurred, developers obtaining coastal development permits shall be required prior to the issuance of the coastal development permit to record an offer to dedicate an easement for public access purposes (e.g. vertical, lateral, parking areas, etc.) where it is delineated in the land use plan as a condition of permit approval. The offer shall be in a form and content approved by the Commission and shall be recorded in a manner approved by the Commission before the coastal development permit is issued.

LUP Policy 3.6-9 states:

Offers to dedicate an easement shall be required for all areas designated on the land use plan maps. Where sufficient sites in public ownership exist, additional private lands or easements over private lands beyond those shown on the land use plan maps shall not be required without a plan amendment or as otherwise required by the County. When considering such an amendment sites for shoreline access in public ownership shall be favored over those in private ownership.

LUP Policy 3.6-12 states:

Vertical accessways not shown on the Land Use Maps or required by these policies shall not be required as a condition of permit approval unless the plan shall have been amended to change the intensity of use, or to delete an access point shown on the plan and serving a similar need.

LUP Policy 3.6-25 states:

Public access policies shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

- *topographic and geologic site characteristics;*
- *capacity of the site to sustain use and at what level of intensity;*
- *fragility of natural resource areas and proximity to residential uses;*
- *need to provide for management of the access;*
- *balance between the rights of individual property owners and the public's constitutional rights of access.*

LUP Policy 3.6-27 states:

No development shall be approved on a site which will conflict with easements acquired by the public at large by court decree. Where evidence of historic public use indicates the potential for the existence of prescriptive rights, but such rights have not been judicially determined, the County shall apply research methods described in the Attorney General's "Manual on Implied Dedication and Prescriptive Rights". Where such research indicates the potential existence of prescriptive rights, an access easement shall be required as a condition of permit approval. Development may be sited on the area of historic public use only if: (1) no development of the parcel would otherwise be possible, or (2) proposed development could not otherwise be sited in a manner which minimizes risks to life and property, or (3) such siting is necessary for consistency with the policies of this plan concerning visual resources, special communities, and archaeological resources. When development must be sited on the area of historic public use an equivalent easement providing access to the same area shall be provided on the site.

LUP Policy 3.6-28 states:

New development on parcels containing the accessways identified on the land use maps shall include an irrevocable offer to dedicate an easement, as required by other policies in this Chapter, for public use. Such offers shall run for a period of 21 years and shall be to grant and convey to the people of the State of California an easement for access over and across the offeror's property.

Section 20.528.010 of the Mendocino County Coastal Zoning Code, "Minimum Access Locations," states in applicable part:

(A) In specified areas identified in Chapter 4 of the Coastal Element or as indicated on land use maps, prior to the issuance of a coastal development permit, an offer to dedicate an easement for public access shall be recorded unless required public access has otherwise been secured as provided herein.

Section 20.528.030 of the Coastal Zoning Code, "Prescriptive Rights," states:

Provisions related to prescriptive rights are as follows:

(A) Existing Public Easement. *No development shall be approved on a site which will conflict with easements acquired by the public at large by court decree.*

(B) Potential Existence of Prescriptive Right.

(1) Rights Not Yet Established. *Where evidence of historic public use indicates the potential for the existence of prescriptive rights, but rights have not been judicially determined, the County Planning and Building Department staff shall apply research methods described in the Attorney General's Manual on Implied Dedication and Prescriptive Rights.*

(2) Potential Existence of Rights Established. *Where research indicates the potential existence of prescriptive rights, an access easement shall be required as a condition of permit approval.*

(C) Development in Area of Historic Public Use.

(1) *Development may be sited on the area of historic public use only if:*

(a) No development of the parcel would otherwise be possible; or

(b) Proposed development could not otherwise be sited in a manner which minimizes risks to life and property; or

(c) Such siting is necessary for consistency with the policies of the Coastal Element concerning visual resources, special communities, and paleontological and archaeological resources.

(2) *When development must be sited on an area of historic public use, an equivalent easement providing access to the same area shall be provided on the site as a condition of permit approval. (Ord. No. 3785 (part), adopted 1991)*

Section 30210 of the Coastal Act requires that maximum public access be provided consistent with public safety needs and the need to protect natural resource areas from overuse. Section 30212 of the Coastal Act requires that access from the nearest public roadway to the shoreline be provided in new development projects except where it is inconsistent with public safety, military security, or protection of fragile coastal resources, or

adequate access exists nearby. Section 30211 requires that development not interfere with the public's right to access gained by use or legislative authorization.

Discussion

In applying Sections 30210, 30211 and 30212 of the Coastal Act and the public access policies and standards of the certified LCP listed above, the Commission is limited by the need to show that any denial of a permit application based on these sections, or any decision to grant a permit subject to special conditions requiring public access, is necessary to avoid or offset a project's adverse impact on existing or potential access. There are no existing trails to the shoreline on the property, and the site is not designated as a potential public access location on the LUP maps. Additionally, the development would not interfere with any historic public use of the property, and there are no indications of the existence of prescriptive rights or existing public access easements on the parcel, adding further support to the County's decision not to require public access as a condition of permit approval. Moreover, the proposed replacement of a single-family residence would not increase the density of development and bring more people to the shoreline, and thus would not increase the demand for additional public access facilities.

Thus, because the approved development would not adversely affect any existing or proposed public access, the local government has a high degree of factual and legal support for its decision to not require public access, and no substantial issue is raised with regard to the conformance of the project with the public access policies of the LCP and the Coastal Act. Therefore, the Commission finds that the contention raised by the appellants does not raise a substantial issue of conformance of the approved project with provisions of the Certified Local Coastal Program and the public access policies of the Coastal Act.

b. Visual Resources

The Appellant contends that the approved development would be highly visible from Iversen Point Road and that the development is incompatible with the "established visual scale" of the area, alleging that the development and its associated infrastructure will take up nearly 75% of the land, and that the interior floor area is twice that of other residences in the neighborhood.

LCP Policies and Standards

LUP Policy 3.5-1 states in applicable part:

The scenic and visual qualities of Mendocino County coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be

visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting.

LUP Policy 3.5-3 states:

The visual resource areas listed below are those which have been identified on the land use maps and shall be designated as "highly scenic areas," within which new development shall be subordinate to the character of its setting. Any development permitted in these areas shall provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes.

...

- *Portions of the coastal zone within the Highly Scenic Area west of Highway 1 between the south boundary of the City of Point Arena and the Gualala River as mapped with noted exceptions and inclusions of certain areas east of Highway 1.*

In addition to other visual policy requirements, new development west of Highway One in designated "highly scenic areas" is limited to one-story (above natural grade) unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. Variances from this standard may be allowed for planned unit development that provides clustering and other forms of meaningful visual mitigation. New development should be subordinate to natural setting and minimize reflective surfaces. All proposed divisions of land and boundary line adjustments within "highly scenic areas" will be analyzed for consistency of potential future development with visual resource policies and shall not be allowed if development of resulting parcel(s) could not be consistent with visual policies.

LUP Policy 3.5-4 states:

Buildings and building groups that must be sited within the highly scenic area shall be sited near the toe of a slope, below rather than on a ridge, or in or near the edge of a wooded area. Except for farm buildings, development in the middle of large open areas shall be avoided if an alternative site exists.

Minimize visual impact of development on hillsides by (1) requiring grading or construction to follow the natural contours; (2) resiting or prohibiting new development that requires grading, cutting and filling that would significantly and permanently alter or destroy the appearance of natural landforms; (3) designing structures to fit hillside sites rather than altering landform to accommodate

buildings designed for level sites; (4) concentrate development near existing major vegetation, and (5) promote roof angles and exterior finish which blend with hillside. Minimize visual impacts of development on terraces by (1) avoiding development in large open areas if alternative site exists; (2) minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms; (3) provide bluff setbacks for development adjacent to or near public areas along the shoreline; (4) design development to be in scale with rural character of the area. Minimize visual impact of development on ridges by (1) prohibiting development that projects above the ridgeline; (2) if no alternative site is available below the ridgeline, development shall be sited and designed to reduce visual impacts by utilizing existing vegetation, structural orientation, landscaping, and shall be limited to a single story above the natural elevation; (3) prohibiting removal of tree masses which destroy the ridgeline silhouette. Nothing in this policy shall preclude the development of a legally existing parcel.

LUP Policy 3.5-5 states in applicable part:

Providing that trees will not block coastal views from public areas such as roads, parks and trails, tree planting to screen buildings shall be encouraged. In specific areas, identified and adopted on the land use plan maps, trees currently blocking views to and along the coast shall be required to be removed or thinned as a condition of new development in those specific areas. New development shall not allow trees to block ocean views.

Section 20.504.015, “Highly Scenic Areas”, of the Coastal Zoning Code states in applicable part:

(C) Development Criteria.

(1) Any development permitted in highly scenic areas shall provide for the protection of coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes.

(2) In highly scenic areas west of Highway 1 as identified on the Coastal Element land use plan maps, new development shall be limited to eighteen (18) feet above natural grade, unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures.

(3) New development shall be subordinate to the natural setting and minimize reflective surfaces. In highly scenic areas, building materials including siding and roof materials shall be selected to blend in hue and brightness with their surroundings.

(5) Buildings and building groups that must be sited in highly scenic areas shall be sited:

- (a) Near the toe of a slope;*
- (b) Below rather than on a ridge; and*
- (c) In or near a wooded area.*

...

(7) Minimize visual impacts of development on terraces by the following criteria:

- (a) Avoiding development, other than farm buildings, in large open areas if alternative site exists;*
- (b) Minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms;*
- (c) Provide bluff setbacks for development adjacent to or near public areas along the shoreline;*
- (d) Design development to be in scale with rural character of the area.*

(10) Tree planting to screen buildings shall be encouraged, however, new development shall not allow trees to interfere with coastal/ocean views from public areas.

(11) Power transmission lines shall be located along established corridors where possible and where the corridors are not visually intrusive.

(12) Power distribution lines shall be placed underground in designated "highly scenic areas" west of Highway 1 and in new subdivisions. East of Highway 1, power lines shall be placed below ridgelines if technically feasible.

(13) Access roads and driveways shall be sited such that they cause minimum visual disturbance and shall not directly access Highway 1 where an alternate configuration is feasible. (Ord. No. 3785 (part), adopted 1991)

Section 20.504.020 of the Coastal Zoning Code states in applicable part:

(D) The scenic and visual qualities of Mendocino County Coastal Areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas. New

development in highly scenic areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting. (Ord. No. 3785 (part), adopted 1991)

Discussion

The appellant contends that the approved development would be visible from Iversen Point Road and that the scale of the approved development, namely the residence, workshop, and the guesthouse, is incompatible with the character of the residences in the surrounding area. The subject property is located in an area designated as “highly scenic” on the LUP maps, and LCP policies for highly scenic areas require, among others, that the development not impede public views to the coast and that the development be “subordinate to the character of its setting.” Standards include that the development not exceed eighteen (18) feet in height unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures.

There is an existing residence on the property that extends out onto the bluff on the southwesterly tip of the parcel, and this existing residence is visible from Iversen Point Road. The approved project includes the removal of this existing house, and constructing a new house approximately five feet further back from the existing house location. This would put a large portion of the new residence behind a cluster of evergreen trees on the southwestern side of the bluff, leaving about ¼ of the house extending seaward of the trees. Upon viewing the approved project site from Iversen Point Road, including the erected story poles that depict the ridgelines of the approved residence, workshop, and guest cottage, Commission staff concluded that the development would be largely obscured by evergreen trees, which surround the parcel boundaries. While one would be able to see the buildings, one can also see neighboring residences from this same vantage point, and the approved residence would be subordinate to the character of its setting.

The increase in roof height of the Cupola to 21’5” over the standard 18’ is offset by the fact that it will not affect public views of the ocean, consistent with Section 20.504.015 of the Coastal Zoning Code and LUP Policies 3.5-1 and 3.5-3. Furthermore, the roof ridges over the majority of the house have a height of approximately 16’6”, less than the LCP 18’ standard for highly scenic areas. While the approved development does include three buildings, the total lot coverage is only 10.5%, below the maximum coverage of 15% required for parcels zoned Rural Residential-2 acre minimum. The primary residence would be 2,259 square feet, which is not particularly large, and not out of character with the surrounding residences. Moreover, because of the existing evergreen trees along the parcel boundary bordering the highway, and a newly planted second layer of trees along this boundary, the approved development would be barely visible from Highway One. While the existing residence can be seen through the trees from the highway as one passes in front of the parcel, it is barely noticeable. Furthermore, if the proposed development were viewed from Highway One, one would only see one structure, because the structures are laid out in a vertical line from the seaward side of the parcel towards the highway side of the parcel (see exhibit 3). This would not be out of character with the neighboring residences, which are located closer to the highway.

Thus, because the approved development would a) not block public views to the ocean from any public vantage point; and b) the approved development would be compatible with and subordinate to the character of its setting; the local government has a high degree of factual and legal support for its decision to approve the project, and no substantial issue is raised with regard to the conformance of the project with the visual resource policies of the LCP. Therefore, the Commission finds that the contention raised by the appellant does not raise a substantial issue of conformance of the approved project with provisions of the Certified Local Coastal Program and the public access policies of the Coastal Act.

Conclusion

All of the various foregoing contentions raised by the appellants have been evaluated against the claim that they raise a substantial issue in regard to conformance of the local approval with the certified LCP. The Commission finds that the project as approved raises a substantial issue of conformance with the certified LCP with respect to contentions raised concerning geologic stability.

E. INFORMATION NEEDED FOR *DE NOVO* REVIEW OF APPLICATION

As stated above, Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue exists with respect to the grounds on which an appeal has been filed. Section 30621 of the Coastal Act instructs the Commission to provide for a *de novo* hearing on all appeals where it has determined that a substantial issue exists with respect to the grounds on which an appeal has been filed. If the Commission finds substantial issue as recommended above, staff also recommends that the Commission continue the *de novo* hearing to a subsequent date. The *de novo* portion of the appeal must be continued because the Commission does not have sufficient information to determine what, if any, development can be approved, consistent with the certified LCP.

Given that the project the Commission will be considering *de novo* has come to the Commission after an appeal of a local government action, the Commission has not previously been in the position to request information from the applicant needed to determine if the project can be found to be consistent with the certified LCP. Following is a discussion of the information needed to evaluate the development.

Geotechnical Analyses

As discussed above, authorization of the placement of the proposed structures on a bluff top lot is contingent on making findings that (a) the approved project site will be stable over the life of the project, and (b) that threats to the development from geologic hazards will be minimized and mitigated. Because the existing

geotechnical report does not have sufficient information with which to make these findings, a “quantitative slope stability analysis” is needed that determines: (1) the static minimum factor of safety against landsliding of the bluff in its current configuration; (2) assuming that factor of safety obtained in (1) is less than 1.5, the location on the bluff top where a factor of safety of 1.5 is obtained; (3) the pseudostatic minimum factor of safety of the bluff, using a horizontal seismic coefficient of 0.15g; and (4) assuming that the factor of safety in (3) is less than 1.1, the location on the bluff top where a factor of safety of 1.1 is obtained.

The June 15, 2004 BACE Geotechnical Investigation estimates the long term average bluff retreat rate 3.2”/yr for the southwest bluff, 2.6”/yr for the northwest bluff, and 2”/yr for the southeast bluff. In order to make the findings described above, additional information is needed as to how these figures were determined, and, assuming that the figures represent historic long-term average bluff retreat rates, what time intervals they represent. In addition, an assessment of the effect of rising sea level on future erosion rates of the bluff is also needed.

Without the above information, the Commission cannot reach a final determination concerning the consistency of the project with the geologic hazard policies of the LCP. Therefore, before the Commission can act on the proposed project *de novo*, the applicant must submit all of the above-identified information.

EXHIBITS

1. Regional Location Map
2. Vicinity Map
3. Project Plans
4. Notice of Final Action
5. Appeal
6. BACE Geotechnical Analysis